

STATE OF OREGON DEPARTMENT OF AGRICULTURE
Before the Director of the Department of Agriculture

In the Matter of the Imposition of Civil Penalty)	NOTICE OF ASSESSMENT OF
Against Eric Silva and Paula Wolf)	CIVIL PENALTY
dba Sunset Canyon Jerseys)	
Oregon CAFO General Permit Number 01-2016)	#1827785
Master Address No. 146914)	
)	Sent via certified and regular mail

BACKGROUND

Pursuant to its authority, the Oregon Department of Agriculture ("ODA" or "department") has adopted General Permit No. 1-2016 for Confined Animal Feeding Operations ("CAFOs"). ORS 468B.035. ORS 468B.217. OAR 603-074-0014. Any person owning or operating a CAFO must seek coverage under the National Pollutant Discharge Elimination System (NPDES) Oregon CAFO General Permit Number 01-2016 ("CAFO Permit") and must comply with the permit's terms. ORS 468B.050. OAR 603-074-0014. ODA, as the administering agency, is charged with enforcing the terms of permitted operations so as to protect the public against animal wastes discharged into the waters of the state. ORS 468B.217. No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050. ORS 468B.025.

The department is authorized to assess civil penalties. ORS 468B.230. OAR 603-074-0070.

ODA hereby issues a Notice of Assessment of Civil Penalty in the amount of **\$9,500.00** to Eric Silva, dba Sunset Canyon Jerseys, for violation of special permit conditions: S2.A, Prohibitions and Discharge Limitations by allowing liquid manure to enter waters of the state that violated state water quality standards for E.coli.

The findings on which this determination is based and the criteria used to calculate the penalty are set out below.

FINDINGS OF FACT

1. Permittee Eric Silva and Paula Wolf own and operate a Medium dairy CAFO, Sunset Canyon Jersey's located at 26755 Blaine Rd., in Beaver, Oregon, registered to the Oregon CAFO NPDES General Permit Number 01-2016 under Master Address No.146914.
2. The CAFO General Permit #01-2016 contains the following special conditions:
S2.A, Prohibitions and Discharge Limitations, which reads, in part:
 1. The permit registrant must not discharge manure, litter or process wastewater to surface water and groundwater of the state except as allowed in S2.B and S2.C and provided these surface water discharges do not exceed the following effluent limits.
 - a. E.coli must not exceed zero organisms/100mL or quantitation limit of 2 Colony Forming Units/100mL or 0.0 most probable number/100mL;
 2. Compliance with the effluent limits above must be determined by laboratory test results of a representative grab sample of the discharge taken at the time of occurrence. If a grab sample is not then the permit registrant is in violation of the effluent limits.
3. **On April 7, 2017**, the department issued a Notice of Assessment of Civil Penalty #1727098 to Sunset Canyon Jerseys for violations of S2.A, Discharge Limitations and S3.A, Animal Waste Management Plan (AWMP) Implementation and Compliance.
4. **On September 18, 2017**, the department issued a Consent Order #1727289 to Sunset Canyon Jerseys as the final resolution of NACP #1727098 that included the following recitations:

15.5 I understand and agree that this Consent Order does not preclude additional enforcement action by the department in the event of any noncompliance with the terms of this Consent Order, ORS Ch 4368B, OAR Ch. 603 Div. 74, Ch 340 Div. 45 or 51, the CAFO Permit, the Plan of Correction or any other applicable law.

16.1 Eric Silva (Permittee) must complete the following actions:

- i. Permittee must operate for eighteen (18) months after the date of this Consent Order without further violations of the CAFO General Permit No. 1-2016 Condition S.2.A, Prohibitions and Discharge Limitations, to which he is registered under Master Address No. 146914.

5. **On March 13, 2018**, at 5:06 pm, a text message was received on an ODA inspector's phone along with a picture of foamy water reportedly in the Nestucca River. The message detailed that the foam seemed to be coming from a drainage ditch that drains Sunset Canyon Jersey Dairy's "Bell" fields. The ODA representative responded to the message and headed out to meet with Mr. Silva. Mr. Silva was contacted by the ODA representative via phone to inform him of the complaint and that a department representative was on the way to conduct a complaint inspection. Mr. Silva did inform the ODA representative that he had made a liquid manure application to Bell field #3 the day before (3-12-18) and that it all looked fine. After Mr. Silva completed the application, rainfall began during the night of 3-12-18 and continued for most of the following day, 3-13-18. When the ODA representative arrived at the application site, there appeared to be a pool of liquid manure mixed with rain water at the southwest end of Bell field #3. The ODA representative then contacted Mr. Silva again to inform him that he was at the field and ready to start the inspection and there was the possibility that water quality samples would need to be taken. Mr. Silva agreed to meet at the Bell field #3 site.

When the ODA representative walked to the area in the field where the liquid manure was pooled, he saw that an earthen berm was holding back a pool of liquid manure mixed with storm water. Manure mixed with storm water was flowing out of a small hole in the berm and flowing down gradient toward a drainage ditch in the field. The liquid manure and storm water mixture then discharged into the drainage ditch that ultimately drains into the Nestucca River. Pictures were taken (see attached) and four (4) water quality samples were also collected (see attached map). As the ODA representative was taking the water quality samples, Mr. Silva arrived and started to plug the hole that was causing the leak into the ditch. Mr. Silva also explained that he was making the application the day before in accordance with the consent order #1727289 that was issued to him the previous year.

Water quality samples were labeled and stored on ice and were hand delivered to the ODA lab in Portland on March 14, 2018. Inspection report #1827896 was issued a Final Inspection Results Pending (FIRP) to await the results of the water quality samples.

6. **On March 27, 2018**, the department received the results of the water quality samples collected on March 13, 2018. The sample results are listed on the sampling map (attached) and indicate that the manure discharge into waters of the state did cause exceedances of the water quality standard for bacteria.

ULTIMATE FINDINGS OF FACT

1. Permittees Eric Silva and Paula Wolf operate a Medium dairy CAFO, Sunset Canyon Jersey's, located at 26755 Blaine Road, in Beaver, Oregon, that is registered to the Oregon CAFO NPDES General Permit Number 01-2016 under Master Address No. 146914.
2. **On September 18, 2017**, ODA issued a Consent Order #1727289 to Sunset Canyon Jerseys as the final resolution of NACP #1727098.
3. **On March 13, 2018**, the permit registrant discharged liquid manure and contaminated storm water into waters of the state and the discharge caused an exceedance of the water quality standards for bacteria in surface water. The discharge was not allowed under the Permit conditions S2.B or S2.C.

CONCLUSIONS OF LAW

1. **On March 13, 2018**, the permittee violated the CAFO NPDES General Permit No. 01-2016's Special condition: S2.A, Prohibitions and Discharge Limitations by allowing liquid manure to enter waters of the state that violated state water quality standards for E.coli. as evidenced in Findings of Fact paragraphs #5 and #6
2. The department is authorized to assess civil penalties. ORS 468B.230. OAR 603-074-0070.

PENALTY CALCULATION

The penalty calculation total is **\$9,500.00**. The penalty is determined using the criteria in OAR 603-074-0070 and OAR 603-074-0080.

OAR 603-074-0070(1) provides that "the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under ORS Chapter 468 or 468B."

Pursuant to OAR 603-074-0070(1) and OAR 603-074-0080(4), the department used the following formula to calculate the civil penalty:

$$B + [(1 \times B) (P + H + R)] = \text{Penalty Amount}$$

VIOLATION #1

Penalty calculation for violation number 1 that occurred on March 13, 2018, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S2A, Prohibitions and Discharge Limitations and is documented in Findings of Fact paragraphs #5, and #6.

$$B + [(1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$5,000.00 for Category I (Major) repeat violation, and High gravity of effect. OAR 603-074-0070(4)(a)(C) and 0070(5)(a)(B).
2. P, the past occurrence, is 4, for having 2 past occurrences of Category I violations as evidenced in Notice of Civil Penalty #1727098. OAR 603-074-0080(4)(b)(E).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080(4)(c)(C).
4. R, the preventability of the violation, is 4, the person's actions were reasonably avoidable, OAR 603-074-0080 (4)(d)(E).

$$\$5,000.00 + [(1 \times 5,000) (4+1+4)] = \$9,500.00$$

RIGHT TO A HEARING

You have the right to a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183) on the matters in this Notice of Assessment of Civil Penalty. ORS 183.745. ORS 468B.230. The request for a hearing must be made in writing and filed with the Oregon Department of Agriculture (department) within 20 days from the date of receipt of this Notice. OAR 603-074-0050. A request for hearing must be in writing and directed to the attention of:

Stephanie Page, Director
Natural Resources and Pesticides Oregon
Department of Agriculture
635 Capitol Street NE
Salem, OR 97301-2532

You may be represented by legal counsel. Legal aid organizations may be able to assist you if you have limited financial resources. If you make a timely request for a hearing, you will be notified of the time and date of such hearing. The rights and procedures in a contested case will be provided to you upon receipt of a request for a formal contested case hearing. Corporations, partnerships, limited liability companies, trusts, government bodies and unincorporated associations must be represented by an attorney unless otherwise authorized by law.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-7500, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

FINAL ORDER

If you fail to request a hearing within 20 days of service of this notice, withdraw a hearing request, notify the department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, this order shall become final. If this order becomes a Final Order by default, the department designates its file on this matter as the record. A civil penalty imposed by the order will become due and payable 10 days after the order becomes final by operation of law or on appeal. ORS 183.745(2).

Your check or money order should be made payable to the Oregon Department of Agriculture and sent to:

Oregon Department of Agriculture
ATTN: CAFO Program
635 Capitol Street NE
Salem, Oregon 97301-2532

Dated this 26th day of April 2018.


Alexis Taylor, Director
Oregon Department of Agriculture *for*

RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

You have the right to appeal a Final Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order becomes final.

cc: Armando Macias, Area I, Livestock Water Quality Specialist
William Matthews, CAFO Program Manager

Attachments: March 13, 2018 Sample map & lab results
Consent Order #1727289
Notice of Permit Registration Modification #1727288

Sunset Canyon Jerseys
MA# 146914
Sample Date: 3/13/2018

Sample #: 1827896-01
 E_coli: 13,000 MPN/100ml

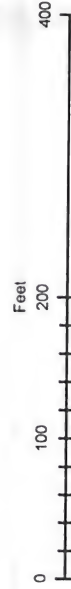
Sample #: 1827896-02
 E_coli: 1,200,000 MPN/100ml

Sample #: 1827896-03
 E_coli: 1,400,000 MPN/100ml

Sample #: 1827896-04
 E_coli: 430 MPN/100ml

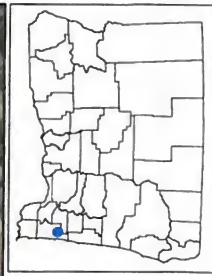
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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Prepared By: amecias & dwisler
 Date Saved: 3/27/2018
 Scale: 1:1,641
 Projection: NAD 1983 Oregon Statewide Lambert Feet Ind



LABORATORY SERVICES

Phone: (503) 872-6644

FAX: (503) 872-6615



OREGON DEPARTMENT OF AGRICULTURE

1207 NW NAITO PARKWAY, STE 204

PORTLAND, OREGON 97209-2835

Laws and Regulations Administered by
Natural Resources Division: (503) 986-4700

REPORT OF LABORATORY ANALYSIS - CAFO SAMPLES

Requesting Division:

ODA, Natural Resources Division
635 Capitol St. NE

Salem, OR 97301

Contact: Wym Matthews

Sample Source:

Bell's field ditch
Erica Silva
26755 Blaine Rd.
, OR

Sampled at: Bell's field ditch

Date Sampled: 3/13/18 Sampled by: ARMANDO MACIAS

Date Received: 3/14/18 Time Received 11:30 Received by: Bdinntorn B. Nuanual

Analysis began: 3/14/18 at 13:40

Method of Sampling: Grab & Iced

Reason for Sampling: discharge to surface water

Related Samples:

SAMPLE IDENTIFICATION & ANALYTICAL REPORT

Laboratory Number:	18-A1290	Sample Number:	1827896-01
Time Sampled:	18:15	Site Information:	25 yds downstream from discharge

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	13,000 MPN/100ml	WJF

Laboratory Number:	18-A1291	Sample Number:	1827896-02
Time Sampled:	18:17	Site Information:	Mixing point from field to ditch

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	1,200,000 MPN/100ml	WJF

Laboratory Number:	18-A1292	Sample Number:	1827896-03
Time Sampled:	18:19	Site Information:	Discharge point in field

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	1,400,000 MPN/100ml	WJF

Laboratory Number:	18-A1293	Sample Number:	1827896-04
Time Sampled:	18:25	Site Information:	25 yds upstream from mixing point

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	430 MPN/100ml	WJF

REC'D MAR 27 2018

Reviewed by: Jim Madden

Date: 3/15/18



10131

UNIVERSAL SAMPLE COLLECTION AND LABORATORY ANALYSIS REQUEST FORM

Requesting Division/Agency/Firm OOA/CAFO/NRPA			
Address 635 Capitol St. Salem OR 97301			
Phone 503-842-6228	Contact Person Armando Macias	Accounting Information	
Source/Establishment/Registrant			
Name: Enric Silva			
Address: 26755 Blaine Rd.			
Sampled At Bell's Auld ditch	Establishment/Lic. No. 146914	Date/Time Collected 3/13/18 6pm	Sample(s) Collected By A Macias
Method of Sampling and Sample Preparation			

Grab + Ice

Related Samples		Reason for Sampling discharge to surface water	
Date Received in Laboratory 3/14/18 11:30	Received By Bo Nuanand	Shipment Temperature Controls	
Product 4598 - 0.1% / 0.7% / 0.6% C		Sampling Loc.	F

SAMPLE NUMBER	LABORATORY NUMBER	SAMPLE TYPE/PRODUCT/BRAND	CODE/PULL DATE	CONTAINER SIZE	TEST(S) REQUESTED
527896-01	18A1290	25 yds downstream from Discharge	3/13/18 6:15pm	250 ml	E-Coli
527896-02	18A1291	mixing point from field to ditch	3/13/18 6:17pm		
527896-03	18A1292	Discharge point in field	3/13/18 6:19pm		
527896-04	18A1293	25 yds upstream from mixing point	3/13/18 6:25pm		
TL					

REMARKS:

REC'D MAR 27 2018



SAMPLE CUSTODY FORM

Sample Number (s) <div style="font-size: 1.5em; font-weight: bold;">4 + TC.</div>		Sample Source <div style="font-size: 1.5em; font-weight: bold;">Sunset Canyon Eric Silva</div>			
Date Sampled <div style="font-size: 1.5em; font-weight: bold;">3/13/18</div>		Signature of Sampler 			
Method of Shipment <div style="font-size: 1.2em; font-weight: bold;">hand delivered</div>	Shipped by <div style="font-size: 1.2em; font-weight: bold;">A Macias</div>	Shipped From <div style="font-size: 1.2em; font-weight: bold;">Tillamook</div>	Shipping Number		
Shipping Container	Number <div style="font-size: 1.5em; font-weight: bold;">1</div>	Type <div style="font-size: 1.2em; font-weight: bold;">Rubbermade cooler</div>	Condition		
Sample Containers	Number <div style="font-size: 1.5em; font-weight: bold;">4</div>	Type <div style="font-size: 1.2em; font-weight: bold;">250 ml bottles</div>	Condition <div style="font-size: 1.2em; font-weight: bold;">nice</div>		
Samples	Number	Sample Description	Condition	Sealed (Y or N)	Init
	1827896-01	25 yds down stream	nice	N	
	1827896-02	mixing point			
	1827896-03	Discharge point			
	1827896-04	25 yds up stream			
	TC				

Sample Relinquished by (Signed) 	Date/Time <div style="font-size: 1.2em; font-weight: bold;">3/14/18 11:29 am</div>	Sample Received by (Signed) 	Date/ <div style="font-size: 1.2em; font-weight: bold;">3/14/18 11:29</div>

Remarks:

REC'D MAR 27 2018